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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 Bryan A Schneider,

11 Petitioner,

12 v.

13 Ron Haynes,

14 Respondent.

CASE NO. 3:19-cv-05812-BHS-JRC

ORDER

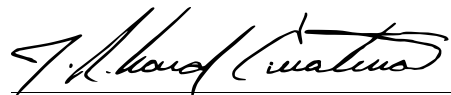
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16 The District Court has referred this action filed under 28 U.S.C. § 2254 to United States
17 Magistrate Judge J. Richard Creatura. On August 30, 2019, petitioner initiated this action
18 challenging his state court convictions and sentence. *See* Dkts. 1, 3. Respondent filed his answer
19 on November 12, 2019. Dkt. 7 The Court has reviewed the petition, respondent's answer, and the
20 state court record. *See* Dkts. 3, 7, 8.

21 In the answer, filed on November 12, 2019, respondent argues that petitioner has not yet
22 appealed his convictions or filed a petition for collateral relief. Dkt. 7 at 5. Respondent argues
23 that after December 2019, if petitioner does not file any form of collateral relief in state court, he
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1 would be procedurally barred from doing so, and that the petition should be dismissed with
2 prejudice. Dkt. 7 at 5. As of the date of this order, the time to file a petition or motion for post-
3 conviction relief has passed. *See* RCW § 10.73.090 (no petition or motion for collateral attack
4 may be filed more than one year after the judgment becomes final). Based on the record before
5 the Court, it is not clear if petitioner sought collateral review in state court, or if he has
6 procedurally defaulted on all his claims. *See Casey v. Moore*, 386 F.3d 896, 920 (9th Cir. 2004);
7 *Eisermann v. Penarosa*, 33 F.Supp.2d 1269, 1274 (D. Haw. 1999) (“[I]f a petitioner has never
8 raised his federal claim to the highest state court available and is now barred from doing so by a
9 state procedural rule, exhaustion is satisfied because no state remedy remains available, but the
10 petitioner has procedurally defaulted on his claim.”).

11 Accordingly, the Court needs additional information to make a determination on the
12 petition. The Court orders respondent to supplement his answer and inform the Court whether
13 petitioner’s claims are procedurally defaulted. Respondent’s supplemental answer must be filed
14 on or before January 17, 2020. Petitioner’s supplemental response, if any, is due January 24,
15 2020. The Clerk is ordered to re-note the petition for consideration on January 24, 2020.

16 Dated this 2nd day of January, 2020.

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20 J. Richard Creatura
21 United States Magistrate Judge
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